

Public Notice

U.S. Army Corps of Engineers, Norfolk District

CENAO-REG
NAO-2009-00272

March 3, 2009

FEDERAL PUBLIC NOTICE

The District Commander has received a joint application for Federal and State permits as described below:

APPLICANT

Bay Creek Marina & Resort, LLC
1 Clubhouse Way
Cape Charles, VA 23310

WATERWAY AND LOCATION OF THE PROPOSED WORK: The project is located in Chesapeake Bay, at 5 Marina Village Circle adjacent to the Aqua Restaurant Cape Charles, Virginia.

PROPOSED WORK AND PURPOSE: The applicant proposes to nourish the beach to provide storm protection. The sand nourishment will adjoin a rip rap revetment which was recently permitted by Nationwide permit 13 at the applicant's request. Beach quality sand will be trucked from a borrow pit and placed along the beach from the toe of riprap channelward on a 10:1 slope. The beach nourishment is part of the storm protection plan for this area. The project requires the filling of 0.43 acres of tidal non-vegetated subaqueous bottom. No mitigation is proposed.

In addition to the required Department of the Army permit, the applicant must obtain a Virginia Water Protection Permit/401 certification from the Virginia Department of Environmental Quality assuring that applicable laws and regulations pertaining to water quality are not violated and a permit from the Cape Charles Wetlands Board. Project drawings are attached.

AUTHORITY: Permits are required pursuant to Section 10 of the Rivers and Harbors Act of 1899 (33 U.S.C. 403), Sections 401 and 404 of the Clean Water Act (Public Law 95-217) and Title 62.1 of the Code of Virginia.

FEDERAL EVALUATION OF APPLICATION: The decision whether to issue a permit will be based on an evaluation of the probable impact including cumulative impacts of the proposed activity on the public interest. The decision will reflect the national concern for both protection and utilization of important resources. The benefits which reasonably may be expected from the proposal must be balanced against its reasonably foreseeable detriments. All of the proposal's relevant factors will be considered, including conservation, economics, aesthetics, general environmental concerns, wetlands, cultural values, fish and wildlife values, flood hazards, flood plain values, land use classification, navigation, shoreline erosion and accretion, recreation, water supply and conservation, water quality, energy needs, safety, food and fiber production, mineral needs, consideration of property ownership and, in general, the needs and welfare of the people.

The Environmental Protection Agency's "Guidelines for Specification of Disposal Sites for Dredged or Fill Material" will also be applied (Section 404(b)(1) of the Clean Water Act).

The Corps of Engineers is soliciting comments from the public; Federal, state, and local agencies and officials; Indian Tribes; and other interested parties in order to consider and evaluate the impacts of this proposed activity. Any comments received will be considered by the Corps of Engineers to determine whether to issue, modify, condition or deny a permit for this proposal. To make this decision, comments are used to assess impacts on endangered species, historic properties, water quality, general environmental effects, and the other public interest factors listed above. Comments are used in the preparation of an Environmental Assessment and/or an Environmental Impact Statement pursuant to the National Environmental Policy Act. Comments are also used to determine the need for a public hearing and to determine the overall public interest of the proposed activity. Anyone may request a public hearing to consider this permit application by writing to the District Commander within 30 days of the date of this notice, stating specific reasons for holding the public hearing. The District Commander will then decide if a hearing should be held.

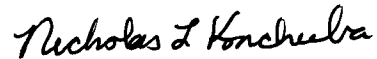
Preliminary review indicates that: (1) no environmental impact statement will be required; (2) the project will impact known habitat of the northeastern beach tiger beetle (*Cincindela dorsalis dorsalis*), listed as endangered or threatened under the Endangered Species Act of 1973 (PL 93-205) will be affected; and (3) there are no known properties that may be eligible for inclusion or included in the National Register of Historic Places are in or near the permit area, or would likely be affected by the proposal. Additional information might change any of these findings. For compliance with the Coastal Zone Management Act of 1972, as amended, the applicant must certify that federally licensed or permitted activities affecting Virginia's coastal zone (Tidewater) will be conducted in a manner consistent with the Virginia Coastal Resources Management Program (VCP). For more information or to obtain a list of the enforceable programs of the VCP, contact the Department of Environmental Quality, Office of Environmental Impact Review at (804) 698-4330 or e-mail: elirons@deq.virginia.gov.

The Magnuson-Stevens Fishery Conservation and Management Act, as amended by the Sustainable Fisheries Act of 1996 (Public Law 104-267), requires all Federal agencies to consult with the National Marine Fisheries Service on all actions, or proposed actions, permitted, funded, or undertaken by the agency, that may adversely affect Essential Fish Habitat (EFH). The Magnuson-Stevens Fishery Conservation and Management Act, as amended by the Sustainable Fisheries Act of 1996 (Public Law 104-267), requires all Federal agencies to consult with the National Marine Fisheries Service on all actions, or proposed actions, permitted, funded, or undertaken by the agency, that may adversely affect Essential Fish Habitat (EFH). Little Creek contains Essential Fish Habitat (EFH) for the egg, larvae, juvenile, and/or adult life stages of eleven species including; windowpane flounder (*Scopthalmus aquosus*), bluefish (*Pomatomus saltatrix*), Atlantic butterflyfish (*Peprilus triacanthus*), summer flounder (*Paralichthys dentatus*), black sea bass (*Centropristus striata*), king mackerel (*Scomberomorus cavalla*), Spanish mackerel (*Scomberomorus maculatus*), cobia (*Rachycentron canadum*), red drum (*Sciaenops ocellatus*), dusky shark (*Charcharinus obscurus*) and sandbar shark (*Charcharinus plumbeus*). The habitat which this project would affect consists open water, mudflats, and tidal emergent wetlands. The proposed project is described in Proposed Work and Purpose, above.

COMMENT PERIOD: Comments on this project should be made in writing, addressed to the Norfolk District, Corps of Engineers (ATTN: CENAO-REG), 803 Front Street, Norfolk, Virginia 23510-1096, and should be received by the close of business on April 2, 2009.

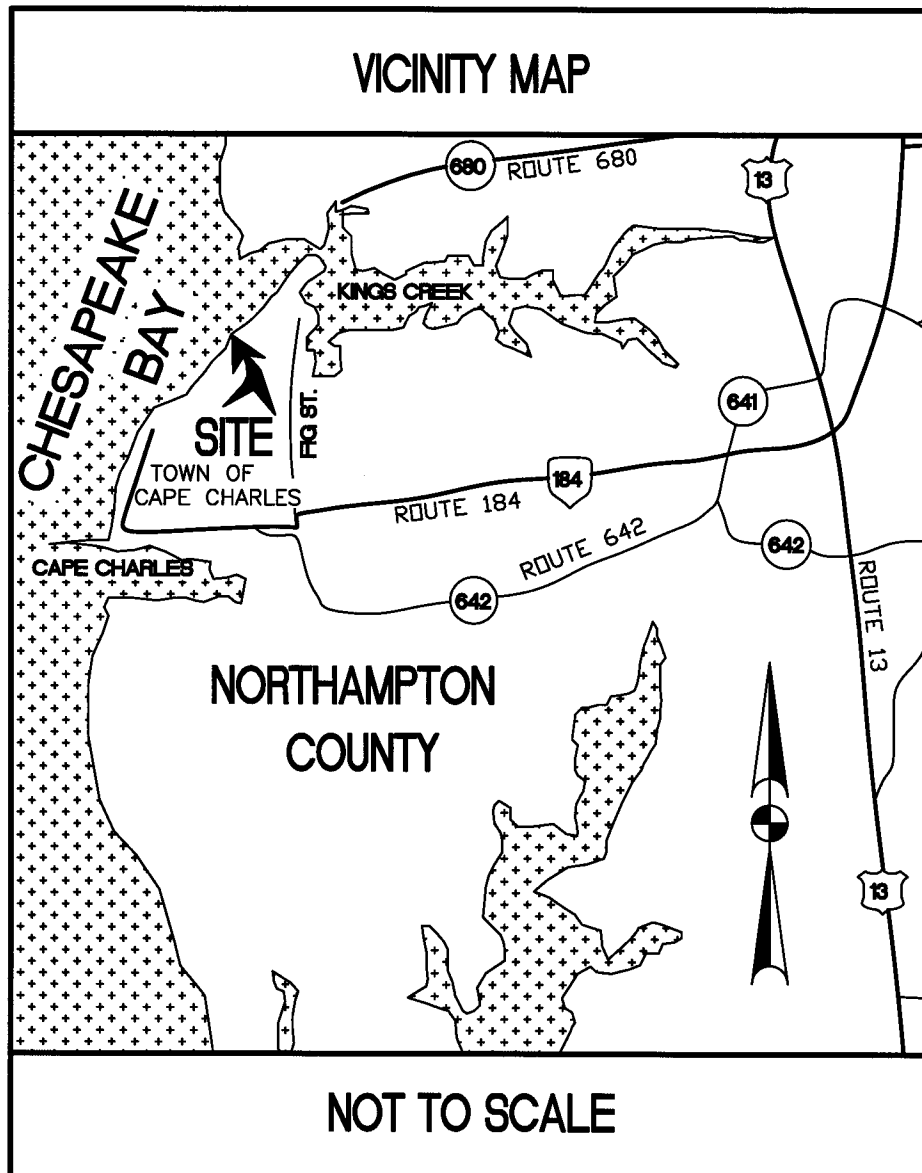
If you have any questions about this project or the permit process, please call Robert Cole at 757-787-7567 or robert.h.cole@usace.army.mil.

FOR THE DISTRICT COMMANDER:



Nicholas L. Konchuba
Chief, Eastern Virginia
Regulatory Section

Attachment: Drawings



PURPOSE : RIPRAP REVETMENT
AND BEACH NOURISHMENT
DATUM : NAVD88 = 0.0

ADJACENT PROPERTY OWNERS

- ① BAY CREEK AT CAPE CHARLES
COMMUNITY ASSOCIATION
- ② GALLOWAY

PERMIT APPLICATION

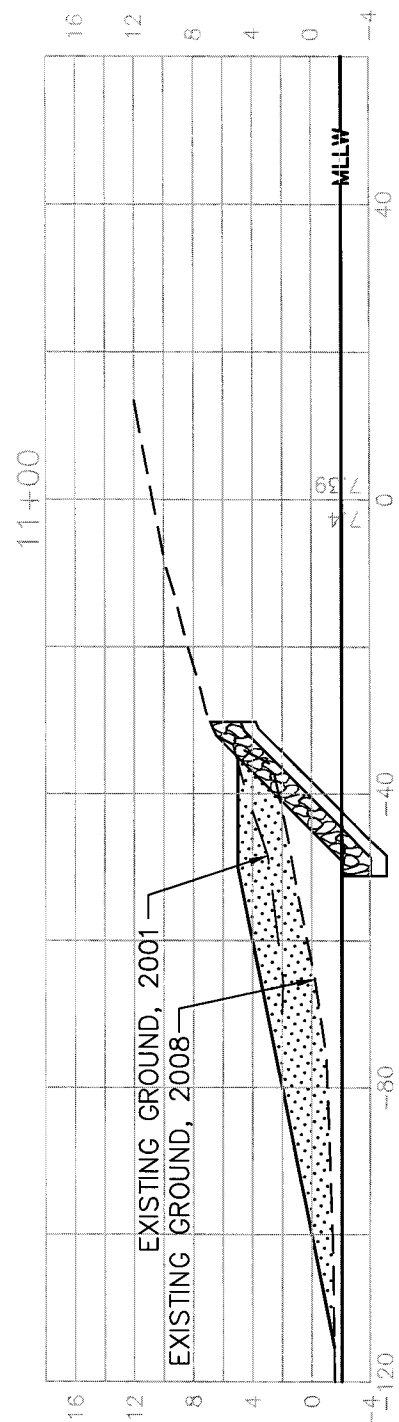
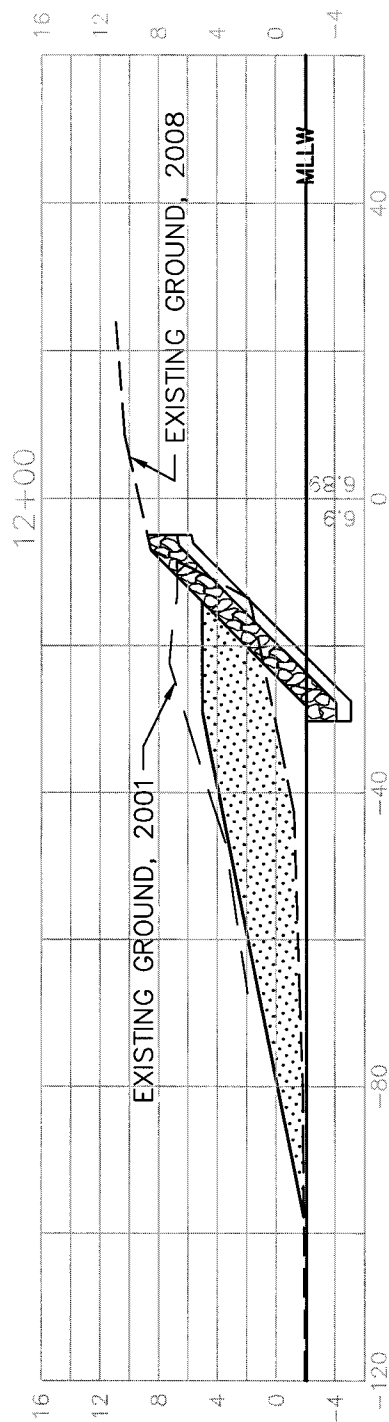
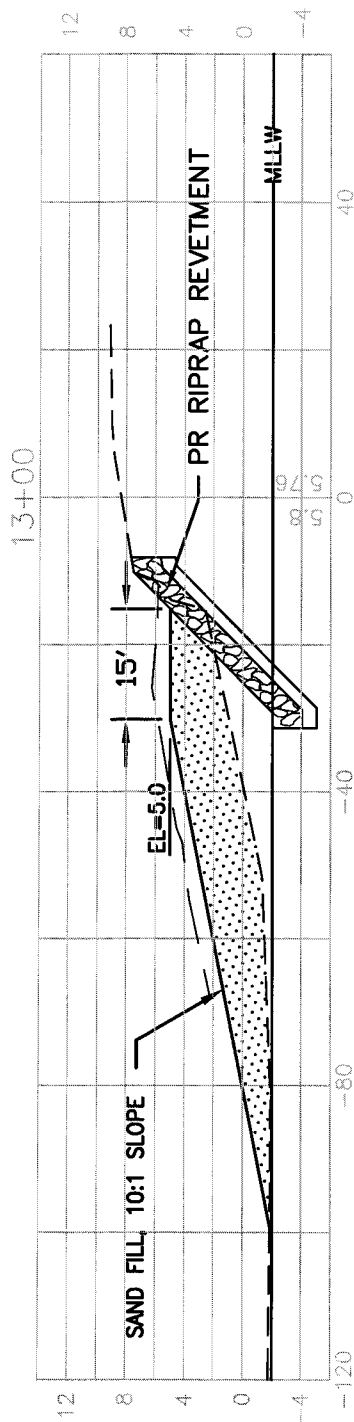
VICINITY MAP

Langley and McDonald, Inc
Engineers Planners Surveyors
309 LYNNHAVEN PARKWAY
VIRGINIA BEACH, VIRGINIA 23452
757-463-4306 (FAX) 757-463-3563

IN : CHESAPEAKE BAY
AT : FIG STREET
CITY/COUNTY : CAPE CHARLES, VA

APPLICATION BY :
BAY CREEK MARINA AND
RESORT, LLC
DATE: JANUARY 2, 2009

SCALE : 1" = AS NOTED
SHT. 1 OF 4



PURPOSE : RIPRAP REVETMENT
AND BEACH NOURISHMENT

DATUM : NAVD88 = 0.0

ADJACENT PROPERTY OWNERS

- ① BAY CREEK AT CAPE CHARLES
COMMUNITY ASSOCIATION
- ② GALLOWAY

PERMIT APPLICATION

SECTIONS

Langley and McDonald, Inc

Engineers Planners Surveyors

309 LYNNHAVEN PARKWAY
VIRGINIA BEACH, VIRGINIA 23452
757-463-4306 (FAX) 757-463-3563

IN : CHESAPEAKE BAY

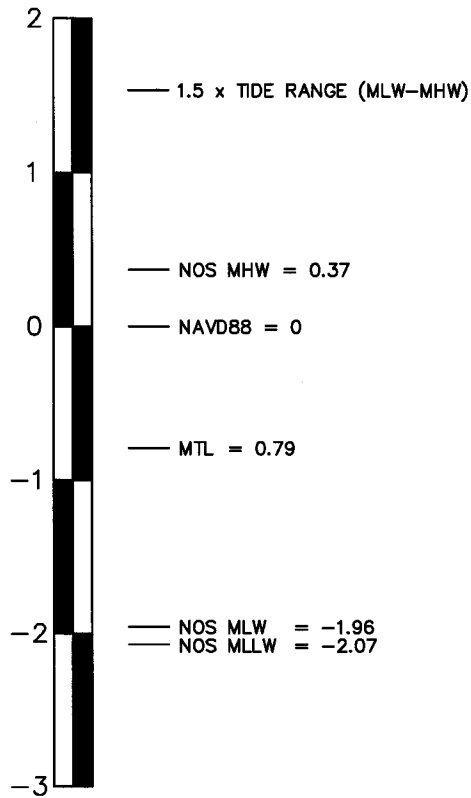
AT : FIG STREET

CITY/COUNTY : CAPE CHARLES, VA

APPLICATION BY :
BAY CREEK MARINA AND
RESORT, LLC

DATE: JANUARY 2, 2009

SCALE : 1" = 25' (HOR)
1" = 12.5' (VER) SHT. 3 OF 4



DATUM DIAGRAM (NTS)

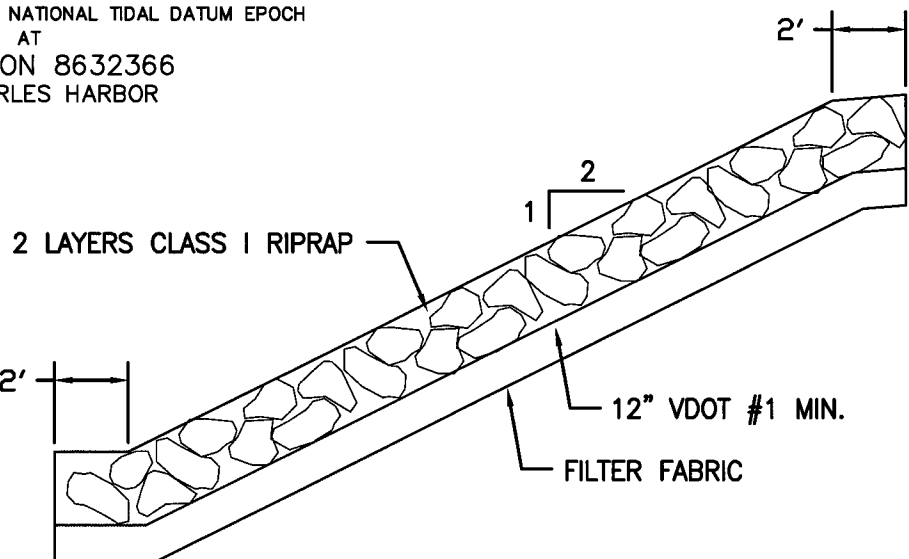
ELEVATIONS ARE IN FEET REFERRED TO NOS MLLW
BASED ON THE 1960-1978 NATIONAL TIDAL DATUM EPOCH
AT

NOS STATION 8632366
CAPE CHARLES HARBOR

+3 (±5 MLW) -

+0.37' (MHW) =
0 (NAVD88) =

-1.96' (MLW) =
-2.07' (MLLW) =



TYPICAL REVETMENT SECTION

SCALE: 1" = 5'

PURPOSE : RIPRAP REVETMENT
AND BEACH NOURISHMENT
DATUM : NAVD88 = 0.0

ADJACENT PROPERTY OWNERS

- ① BAY CREEK AT CAPE CHARLES
COMMUNITY ASSOCIATION
- ② GALLOWAY

PERMIT APPLICATION

SECTIONS

Langley and McDonald, Inc
Engineers Planners Surveyors
309 LYNNHAVEN PARKWAY
VIRGINIA BEACH, VIRGINIA 23452
757-463-4306 (FAX) 757-463-3563

IN : CHESAPEAKE BAY
AT : FIG STREET
CITY/COUNTY : CAPE CHARLES, VA

APPLICATION BY :
BAY CREEK MARINA AND
RESORT, LLC
DATE: JANUARY 2, 2009

SCALE : 1" = 30'
SHT. 4 OF 4